

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 31st day of July, two thousand and six.

PRESENT:

HON. GUIDO CALABRESI,
HON. SONIA SOTOMAYOR,
HON. RICHARD C. WESLEY,
Circuit Judges.

Krishan Singh,

Petitioner,

-v.-

No. 05-4831-ag

Alberto R. Gonzales,

Respondent.

FOR PETITIONER: Krishan Singh, Ozone Park, New York.

FOR RESPONDENT: William J. Leone, United States Attorney for the District of Colorado; Amanda Rocque, Assistant United States Attorney, Denver, Colorado.

UPON DUE CONSIDERATION of this petition for review of the Board of Immigration Appeals ("BIA") decision, it is hereby ORDERED, ADJUDGED, AND DECREED that the petition for review is DENIED.

1 Krishan Singh, *pro se*, petitions for review of the August 2005 decision of the BIA
2 affirming Immigration Judge (“IJ”) Philip L. Morace’s order denying his motion to reopen his
3 immigration proceedings based on changed country conditions. We assume the parties’
4 familiarity with the underlying facts and procedural history.

5 A petition for review of a BIA order must be filed within thirty days of entry of that order.
6 *See Paul v. Gonzales*, 444 F.3d 148, 153 (2d Cir. 2006); 8 U.S.C. § 1252(b)(1). In his petition,
7 Singh seeks to challenge the IJ’s underlying removal order, in addition to the BIA’s decision
8 affirming the IJ’s denial of his motion to reopen. Despite Singh’s apparent desire to challenge
9 the underlying decision, this Court may review only the BIA’s August 2005 order affirming the
10 IJ’s denial of the motion to reopen, as that is the only decision for which a petition was timely
11 filed. *See Paul*, 444 F.3d at 153.

12 When the immigration court denies a motion to reopen or reconsider, this Court reviews
13 the decision for an abuse of discretion. *Twum v. INS*, 411 F.3d 54, 58 (2d Cir. 2005). An abuse
14 of discretion may be found where the decision “provides no rational explanation, inexplicably
15 departs from established policies, is devoid of any reasoning, or contains only summary or
16 conclusory statements; that is to say, where the Board has acted in an arbitrary or capricious
17 manner.” *Ke Zhen Zhao v. U.S. Dep’t of Justice*, 265 F.3d 83, 93 (2d Cir. 2001).

18 _____The IJ did not abuse his discretion in denying Singh’s motion to reopen. The IJ’s finding
19 that Singh essentially failed to establish a *prima facie* case for eligibility for relief was a rational
20 conclusion and a proper basis for denying the motion. *See INS v. Abudu*, 485 U.S. 94, 104-05
21 (1988). In support of his motion to reopen, Singh submitted nothing except his own affidavit.
22 Notwithstanding Singh’s claim that he feared being arrested and tortured due to the coming to

1 power of the Congress Party in India and recent atrocities allegedly committed against the Sikh
2 community there, the IJ reasonably found that Singh had failed to submit materials in support of
3 his motion related to his claim.

4 For the foregoing reasons, the petition for review is DENIED. The pending motion for a
5 stay of removal in this petition is DENIED as moot.

6 FOR THE COURT:
7 Roseann B. MacKechnie, Clerk
8
9

10 By: _____
11 Oliva M. George, Deputy Clerk